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THE SPOKESMAN-REVIEW.COM

Tuesday, April 6, 2004

COMMENTARY**Public defense should be priority**

Our View: Not all Washington counties can afford 'justice for all.'

The phrase "under God" in the Pledge of Allegiance has grabbed a lot of attention lately, but the real scandal in the state of Washington is how we ignore the final four words: "and justice for all."

Ever since 1963, when the U.S. Supreme Court ruled that states have a duty to provide legal counsel to defendants who can't afford one, Washington has tried to meet that requirement on the cheap.

In many of Washington's counties, it is no exaggeration to state that justice

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is provided for those who can afford it. The rest are handed a system that should be an embarrassment to anyone who believes in the Sixth Amendment.

If anyone doubts that, they need only read the three-part expose that began in the Seattle Times on Sunday. Two-thirds of Washington's counties, including Ferry, Whitman, Lincoln, Adams, Stevens and Pend Oreille, operate under a contract system. Many of the

contracts carry fixed fees, so regardless of how many hours an attorney spends on a case, the pay is the same.

The Times took a close look at how this warped system has played out in Grant County in central Washington, where a single attorney took on 413 felony cases last year while maintaining a private practice. The American Bar Association says that an attorney should take no more than 150 such cases annually to do them justice.

The attorney, Thomas J. Earl, would sometimes fail to interview the prosecution's chief witness or visit crime scenes. Several convictions have been overturned because of the shoddy defense his clients received. His acquittal rate between 1999 and 2003 was 6 percent. The average is 15 percent.

When Grant County finally severed his contract, a judge had to round up 49 attorneys -- some experienced, some not -- to pick up his workload.

Another Grant County public defender, Guillermo Romero, has defended more than 1,000 people against felony charges. His most famous client was Barry Loukaitas, the teenager who gunned down two students and a teacher

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at a Moses Lake junior high school. Romero hasn't won a Grant County case since 1997. The former Spokaneite quit working as a public defender last year, but not before multiple judges branded him incompetent. He once asked for a "D and A test." He meant DNA.

Both Earl and Romero have allegedly solicited funds from clients they were supposed to represent free. Both face disbarment.

Grant County is not alone in supplying such shoddy work for indigent clients. In 1973, a state bar study recommended doing away with fixed-fee contracts, because they provided little incentive for competent, conscientious attorneys to become public defenders.

In fixed-fee counties, public defense work may be profitable only if an attorney takes on an inordinate number of cases. Quantity, not quality, is rewarded.

Washington state finances 5 percent of public-defender costs; most states split the costs 50-50 with counties. The outcome is preordained. Richer counties can afford "justice for all." Poorer counties cannot.

The state ignored the 1973 bar recommendation, but it should act now to reverse this embarrassing system of justice.

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